STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY **Petition for Approval of the 220 ILCS 5/16-111.5(d) Procurement Plan**	: : : :	**Docket No. 10-0563**

RESPONSE AND OBJECTIONS TO THE ILLINOIS POWER AGENCY'S PROCUREMENT PLAN FILED SEPTEMBER 29, 2010 BY THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

JESSICA L. CARDONI
JOHN C. FEELEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, respectfully submits this response and objections to the Procurement Plan ("Plan") and the Illinois Power Agency ("IPA") Petition for Approval of the 220 ILCS 5/16-111.5(d) Procurement Plan ("Petition") filed on September 29, 2010 pursuant to Section 16-111.5 of the Public Utilities Act ("PUA"), 220 ILCS 5/16-111.5. Staff also submits the Affidavit of Richard J. Zuraski in support of facts and non-legal matters contained herein.

I. INTRODUCTION

On August 28, 2007, Public Act 095-0481 ("PA 95-0481") was signed into law. PA 95-0481 established the Illinois Power Agency Act (the "IPA Act") (20 ILCS 3855/1-1 et seq.), and made certain modifications and additions to the PUA. This legislation fundamentally modified the method of procurement of power and energy requirements of Illinois electric utilities with more than 100,000 customers as of December 31, 2005.

On August 16, 2010 the IPA filed a draft procurement plan. The IPA's procurement plan must follow the requirements as set out in Section 16-111.5(b), which requires compliance with the requirement of Section 16-111.5 as well as the IPA Act.

On September 15, 2010 comments to the IPA on its draft procurement plan were due. Staff, APX, Inc. ("APX"), CNT Energy, Natural Resources Defense Counsel ("NRDC"), Nodal Exchange, LLC, the Solar Alliance, the Ameren Illinois Utilities ("AIU"), Horizon Wind Energy, Retail Energy Supply Association ("RESA"), the People of the State of Illinois by Attorney General Lisa Madigan ("AG"), the Vote Solar Initiative, Environmental Law and Policy Center ("ELPC"), Exelon Generation Company, LLC ("ExGen"), EnerNOC, Inc., Constellation Energy Commodities Group, Inc. ("CCG" or "Constellation"), Commonwealth Edison Company ("ComEd"), Wind on the Wires ("WOW"), Duke Energy Generation Services Holding Company, Inc. ("Duke"), the City of Chicago ("City"), Iberdrola Renewables, Inc. ("IBR"), and Illinois Competitive Energy Association ("ICEA"), provided comments on the IPA's draft procurement plan.

On September 29, 2010 the IPA filed the Plan for the five year procurement planning period from June 2011 through May 2016. The IPA's Plan incorporated and addressed many of the various listed parties' comments on the draft procurement plan. As set forth below, Staff recommends that any remaining issues classified as objections be addressed through the hearing process described below.

II. PROCESS AND PROCEDURE FOR REVIEW OF THE IPA's PLAN UNDER PA 95-0481

Section 16-111.5 of the PUA, adopted as part of Public Act 095-0481, sets forth various provisions relating to procurement of power and energy. 220 ILCS 5/16-111.5. Subsection (d) of Section 16-111.5 sets forth the process and procedure for the review and approval of IPA procurement plans, beginning in 2008. The statute states, among other things, that: (1) "[w]ithin 5 days after the filing of a procurement plan, any person

objecting to the plan shall file an objection with the Commission"; (2) "[w]ithin 10 days after the filing, the Commission shall determine whether a hearing is necessary"; and (3) the Commission must "enter its order confirming or modifying the procurement plan within 90 days after the filing of the procurement plan by the [IPA]." 220 ILCS 5/16-111.5(d)(3). Pursuant to these statutory guidelines, objections must be filed by October 4, 2010, the Commission must determine whether a hearing is necessary on or before October 14, 2010, and a final Commission order must be entered on or before December 28, 2010.

Section 16-111.5 of the PUA further provides the standard by which the Commission must assess a procurement plan. The statute provides that the Commission shall approve a procurement plan, including the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account the benefits of price stability. 220 ILCS 5/16-111.5(d)(4).

In Docket 08-0519, Staff provided additional comments for the Commission's consideration regarding the process for review and approval of the IPA's Plan. Staff will not repeat those comments here. Consistent with those comments, Staff recommends that the Commission hold hearings to address Staff's and other parties' objections not addressed by voluntary acceptance by the IPA. Staff sees no benefit to not holding hearings this year. While there do not appear to be a large number of issues, the issues that do exist are important and the Commission should develop the most complete record possible to support its determination. Staff recommends that if the

Commission determines hearings are necessary, a status hearing to adopt a schedule should be set for the 18th of October, 2010. The parties and Administrative Law Judge can determine at that point if a paper hearing is feasible or desirable.

If the Commission decides to hold a hearing pursuant to Section 16-111.5(d)(3) of the Act, Staff will recommend at the status hearing the schedule set forward below for the remainder of the 2011 Plan cycle, which includes the dates from last year's schedule for comparison purposes:

	Last Year Actual	Days	This Year Projected	Days
Comments on Draft Plan	Wed 9/16/2009		Wed 9/15/2010	
Revised Plan	Wed 9/30/2009	14	Wed 9/29/2010	14
Objections to IPA Plan	Mon 10/5/2009	5	Mon 10/4/2010	5
Responses to Objections	Fri 10/16/2009	11	Wed 10/20/2010	16
Replies to Responses	Mon 10/26/2009	10	Mon 11/1/2010	12
Commissioner Questions	Mon 11/2/2009	7		
Reply to Commissioner Questions	Fri 11/6/2009	4		
IPA Files "Appendix K" Motion	Mon 11/9/2009	3		
Replies to Motion	Thu 11/12/2009	3		
Replies to Replies to Motion	Mon 11/16/2009	4		
Draft Order	Mon 11/23/2009	7	Thu 11/18/2010	17
BOE	Mon 11/30/2009	7	Wed 11/24/2010	6
RBOE			Thu 12/2/2010	8
Commission Order	Tue 12/29/2009	29	Tue 12/21/2010	19
Commission Deadline	Tue 12/29/2009		Tue 12/28/2010	
Note:	Fixed by Statute		Fixed by Statute	

III. OBJECTIONS AND CONCERNS REGARDING PROCUREMENT PLAN

A. Energy Efficiency as Alternative Resources

Staff objects to the Plan's proposal to consider the purchase of Energy Efficiency as Alternative Resource ("EEAR"). The Plan states the following regarding EEAR:

> The IPA recommends consideration of the purchase of Energy Efficiency as Alternative Resource ("EEAR") for the Ameren portfolio. The purpose of this is twofold – first, to establish whether energy efficiency can be cost competitive with more traditional resources; and second, to establish additional benefits such as price stability can be gained through the expansion in the type of resource products placed into the Ameren portfolio. In order to assure valid results in an EEAR procurement, the IPA recommends holding workshops during the fall of 2010 to establish the scope and nature of the EEAR event with the input of interested parties.
>
> The IPA believes that the appropriate sources for EEAR bids would be programs that are evaluated in a manner equivalent to the existing Energy Efficiency Portfolio Standard ("EEPS") programs offered to eligible retail customers in the Ameren service region. The IPA notes that the results of the EEPS programs have been factored into the Ameren load forecasts in a manner similar to that of other pre-existing supply contracts for the past two cycles. Additionally, the EEPS programs are in their third year of operation and operate under an evaluation and oversight regime supervised by the ICC. These two factors lead the IPA to determine that resources provided by the EEPS are reliable.
>
> Similarly, energy efficiency resources that can show that they are evaluated in a manner equivalent to the EEPS programs, and are, consequently, equally reliable, are an appropriate source for EEAR bids. The IPA will also limit its procurement of Utility-administered resources to those resources that are not required to meet the Energy Efficiency Portfolio Standards.
>
> The IPA proposes that EEAR assets should only be procured when the cost of the EEAR is less than the combined cost of the energy swaps, capacity, and renewable energy resource contracts held by Ameren for the contract period offered by the EEAR provider. As such, the EEAR contracts should be considered after the spring 2011 procurement events for energy resources, capacity, and renewable energy credits through a competitive solicitation.

Plan, pp. 32-33 Analogous language for ComEd is found at page 49 of the Plan except that for ComEd the Plan states the contracts "would be secured through direct negotiation between the IPA and ComEd subject to oversight and authorization by the

ICC. If EEAR assets are not cost competitive, then no contracts shall be executed. In order to assure valid results in an EEAR procurement, the IPA recommends holding workshops during the fall of 2010 to establish the scope and nature of the EEAR event with the input of interested parties." Plan, p. 49

Staff objects to the EEAR proposal for several reasons. First, and most fundamentally, Staff objects because the proposal exceeds the IPA's authority and is contrary to the PUA and IPA Act. More specifically, the purchase of EEAR products is beyond the scope of products the IPA is allowed to procure on behalf of the utilities pursuant to Section 16-111.5 of the PUA. Pursuant to 5/16-111.5(d)(2) the portfolio of products to be included in the IPA's procurement plan is limited to demand response products and power and energy products. (220 ILCS 5/16-111.5(d)(2)) 20 ILCS 3855/1-75(a) provides that procurement plans are to be in compliance with Section 16-111.5 of the Public Utilities Act ("PUA") Clearly, EEAR or energy efficiency products are not listed as a product that is allowed to be purchased by the IPA. In addition, the purchase of EEAR would be subject to the spending limits imposed by Section 8-103(d), which the Plan ignores.

Second, the proposal presumes that the utilities' efficiency programs are far more mature and reliable than Staff is willing to concede. While the first 3-year plans are currently in their third year of operation, evaluations have been completed for only one of the three years. Furthermore, since Section 8-103 does not include any penalties for poor first-year performance, these evaluations were not the subject of a docketed investigation and were not subjected to as rigorous a review as Staff intends to perform on the second and third year evaluations.

Third, there are numerous other issues left unresolved by the IPA's Plan that militate against approval of the EEAR proposal. Among such reasons are:

- The plan fails to specify the quantity and term of the EEAR to be procured, as required by 220 ILCS 5/16-111.5(b)(3)(iv) and (v), respectively.
- Even if the quantity and term were specified, it is difficult to see how EEAR can be considered "a standard wholesale product" as required by 220 ILCS 5/16-111.5(b)(3)(iv).
- The process of negotiation between the IPA and the utilities, as described in the EEAR proposal, seems inconsistent with the provisions of 220 ILCS 5/16-111.5(c), (e), (f), and (g), especially (e)(4), which require a "competitive procurement process" where a "procurement administrator shall design and issue a request for proposals to supply electricity in accordance with each utility's procurement plan, as approved by the Commission. The request for proposals shall set forth a procedure for sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price."
- 220 ILCS 5/16-111.5 makes it clear that supply bids are to be selected solely on the basis of price. But it is not clear what price to use in the context of EEAR. Put another way, the IPA fails to explain how it would decide when EEAR is less expensive than an energy supply resource.

As described above, the IPA has failed to produce a coherent proposal, it has ignored the complexity of the issues involved, it has ignored the procurement procedures described in 220 ILCS 5/16-111.5, and it has exceeded its mandate and its

legal authority. Therefore, Staff recommends that the Plan be modified accordingly to remove all references to the purchase of EEAR products.

B. Optional Incremental Procurement Events

The Plan states:

> To mitigate the risk of price decline, the IPA recommends that the ICC allow for optional procurements for energy only. These optional procurements would be limited to only an additional 10% of projected portfolio requirements in any month for the second and third planning years covered by the Final Procurement Plan that is below the 100% subscription level. The optional procurements would be triggered only when market indices demonstrate that prices for energy supply contracts for the target months are at least 10% below the average weighted price of fixed price contracts already secured by the Utilities for those months and such prices are below the prices for the most recently completed planning year procurement event. The optional procurements would be limited to participation by bidders qualified in and the terms and conditions agreed to in the Spring 2011 solicitation, and allowed only with the authorization of the Commission. After the optional procurement event(s) for energy hedges, the maximum subscription quantity shall be 100% for year 1, 80% for year 2, 45% for year 3 and 0% for years 4 and 5.

(Plan, p. 17) (Also see "Incremental Procurement Events" on pages 34 and 51; and "Timing" on page 3.)

Staff disagrees with this proposal for four reasons, described below.

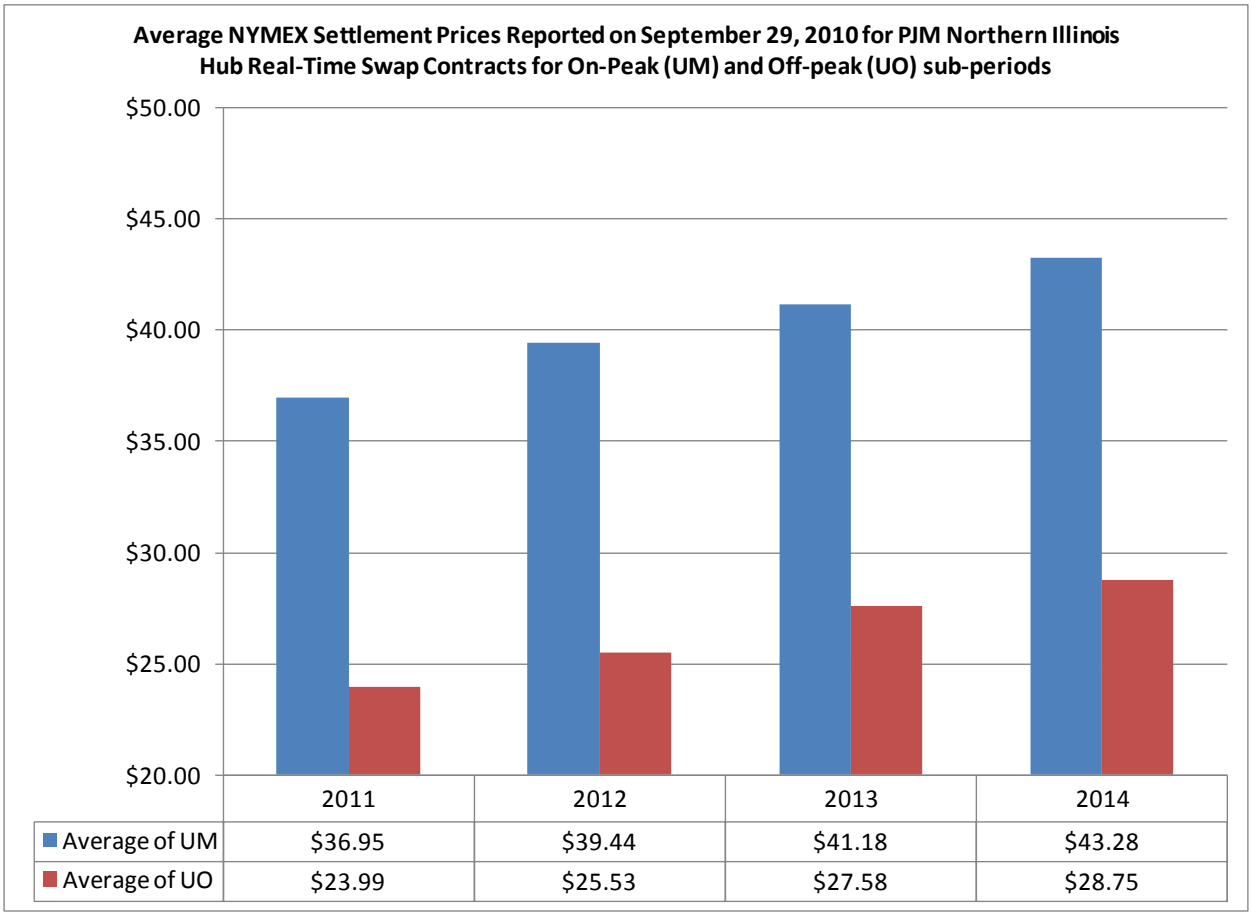
First the proposal does not "mitigate the risk of price decline." A price decline only poses a risk if the utility is hedged beyond 100% of its requirements.

Second, it is not entirely clear what is meant by the phrase, "such prices are below the prices for the most recently completed planning year procurement event." The ambiguity arises from two factors. The first factor is that each procurement event generally results in the purchase of several contracts with a range of prices covering the same delivery period. Is the IPA's proposal that the trigger be when the "market

indices" (which are generally considered to be averages of current market prices) are below (a) the minimum, (b) the maximum, or (c) the average contract prices obtained in the most recent procurement event? The second factor giving rise to ambiguity is that the plan is generally focused on finding combinations of contracts to cover 24 time period per year (defined by month and on-peak versus off-peak sub-period), and a given time period may be covered by several different types of contracts. For example, July 2012 on-peak might be covered by a combination of July 2012 on-peak, July-August 2012 on-peak, and July 2012 – May 2013 on-peak contracts. It could also include July 2012 around-the-clock, July-August 2012 around-the-clock, and July 2012 – May 2013 around-the-clock contracts. Each of these contracts can have very different market values.

Third, to the extent that the proposal would lead to more than the otherwise planned additional 35% of expected load being hedged for each of the last two years covered by the plan, Staff suggests that the planned hedging levels may already be too high if the contracts entail substantial risk premiums. In this regard, Staff notes that NYMEX futures prices for later-year electricity contracts have been considerably higher than for early-year contracts. For example, see Figure 1 below, showing average prices for PJM Northern Illinois real-time energy swap contracts. Whether this is evidence of substantially higher risk premiums for latter years may be difficult to assess, but should be considered by the IPA, and should lead to more caution about expanding the degree of long-run hedges.

Figure 1



	2011	2012	2013	2014
Average of UM	$36.95	$39.44	$41.18	$43.28
Average of UO	$23.99	$25.53	$27.58	$28.75

Finally, while it is unclear just how many of these incremental procurement events might be held under the IPA's proposal, it is nonetheless true that each such event would add considerable costs to the entire procurement process, in the form of time and money spent for procurement administrator, procurement monitor, Commission, and utility services. Staff is particularly concerned that the IPA, itself, does not have the time and resources available to pursue "optional" activities. For reasons that continue to elude Staff, the IPA generally hires procurement administrators several months beyond the planned dates presented in the procurement plans. This past performance raises doubts in Staff's mind about the IPA's ability to handle the additional responsibilities associated with this and other new proposals.

For all the above reasons, Staff recommends that the IPA remove all the above-cited portions of the plan dealing with "optional procurements" and "incremental procurement events."

C. The Illinois Preference

The IPA Act specifically provides that "After June 1, 2011, cost-effective renewable resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in paragraph (1) of this subsection (c)." 20 ILCS 3855/1-75(c)(3) Given that the IPA will be procuring renewable energy resources for the period of June 2011 to May 2012, the Illinois only preference does not apply but the Illinois and adjoining states preference does apply. In relation to the ComEd portion of the plan, the IPA appears to conforms with Section 1-75 (c)(3), stating, "Section 1-75 (c) (3) of the IPA Act requires that beginning June 1, 2011 cost effective renewable energy resources be procured first from facilities in the State of Illinois or from facilities located in states adjacent to Illinois, and then from facilities located elsewhere." (Plan, p. 55, under "Preferences")

However, in relation to the Ameren portion of the plan, the IPA appears to have inadvertently preserved the pre-June 1, 2011 preferences, stating, "Section 1-75 (c) (3) of the IPA Act requires that until June 1, 2011 cost effective renewable energy resources be procured first from facilities in the State of Illinois, then from facilities located in states adjacent to Illinois, then from facilities located elsewhere." (Plan, p. 39, under "Preferences") The plan should be revised to correctly state and account for the

fact that the Illinois and adjoining state preference applies to renewable energy resource procurements covering the period June 2011 to May 2012.[1]

D. Clerical/Typographical Corrections

Attachment D, page 3. There is a difference between the January 2013 row of Table I on page 30 of the Plan and January 2013 row of the otherwise identical Attachment D, page 3. The correct values can be found in the January 2013 row of Table I on page 30 of the Plan. Specifically, the January 2013 row of the otherwise identical Attachment D, page 3, should be modified as follows:

January-13	2222	0	800	1422	750	~~40~~650	0

That is, the fifth column should be "750", not "0"; and the sixth column should be "650" and not "400."

Attachment F. The column headings should use "GWH" rather than "MW." The values in Attachment F are not everywhere identical to the values in Table P on pages 42-43 of the Plan, as they should be.

[1] Given that any renewable energy resource that applies to June 1, 2011 must have an Illinois preference, Staff recommends that no renewable resources with an Illinois and adjoining state preference be procured for June 1, 2011. (i.e. Resources with an Illinois and adjoining state preference should only be acquired for days subsequent to June 1, 2011)

IV. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission make note of Staff's objections to the Plan and approve Staff's recommendations in this docket. If the Commission ultimately accepts Staff's objections, the Commission should also direct the IPA to file a revised procurement plan as a compliance filing in accordance with 20 ILCS 3855/1−75(f).

Respectfully submitted,

/s/_____

JESSICA L. CARDONI
JOHN C. FEELEY

Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov

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